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FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JUL 29 2005

JAMES R. LARSEN, CLERK
DEPUTY
SPOKANE, WASHINGTON

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Attorneys for Plaintiff PepsiCo, Inc.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON
AT SPOKANE

PEPSICO, INC., a corporation,

Plaintiff,

v.

T-SALES WHOLESALE MEXICAN
FOODS, INC., a corporation, and
DAVID R. DAHL, an individual,

Defendants.

Case No. CV-05-115-JLQ

FINAL JUDGMENT

1 Plaintiff, PepsiCo, Inc. ("PepsiCo"), and defendant, T-Sales Wholesale
2 Mexican Foods, Inc. ("T-Sales") and David R. Dahl (jointly, "Defendants"),
3 hereby stipulate to entry of final judgment as follows:
4

5 1. This Court has subject matter jurisdiction by virtue of the fact
6 that:
7

8 (a) this is an action arising under the Trademark Act of 1946,
9 as amended, 15 U.S.C. §§ 1051-1121 (the Lanham Act), jurisdiction
10 being conferred in accordance with 15 U.S.C. § 1121 and 28 U.S.C. §
11 1338(a) and (b); and
12

13 (b) jurisdiction for the Washington state statutory claims is
14 conferred in accordance with the principles of supplemental jurisdiction
15 pursuant to 28 U.S.C. § 1367(a).
16

17 2. This Court has personal jurisdiction over Defendants.
18

19 3. Venue is proper in this Court under 28 U.S.C. 1391(b) in that a
20 substantial part of the events or omissions giving rise to the claims occurred
21 in this district or under 28 U.S.C. § 1391(a) in that Defendants are deemed to
22 reside in this district and are subject to personal jurisdiction in this district.
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4. PepsiCo is the owner, inter alia, of the following federal trademark registrations issued by the United States Patent and Trademark Office for marks used in connection with its PEPSI soft drinks ("PEPSI marks"):

MARK	REG. NO.	REG. DATE	GOODS
PEPSI	824,150	Feb. 14, 1967	Soft drinks and syrups and concentrates for the preparation thereof
PEPSI-COLA	824,151	Feb. 14, 1967	Soft drinks and syrups and concentrates for the preparation thereof
Design mark	824,153	Feb. 14, 1967	Soft Drinks
PEPSI and Design	2,100,417	Sept. 23, 1997	Soft Drinks
PEPSI and Design	2,104,304	Oct. 7, 1997	Soft Drinks

Said registrations are valid, subsisting, incontestable and constitute conclusive evidence of plaintiff's exclusive right to use the PEPSI marks for the goods specified in the registrations, pursuant to 15 U.S.C. §§ 1065 and 1115(b).

5. Without PepsiCo's consent, Defendants have sold in the United States soft drinks manufactured in Mexico bearing the PEPSI marks owned and registered in the United States by PepsiCo (the "Mexican product").

6. Defendants also have sold in the United States Plaintiff's MIRINDA soft drinks that are bottled in Mexico and meant for sale in Mexico. Plaintiff owns a valid and subsisting registration (Reg. No. 811,787)

1 in the United States Patent and Trademark Office of its MIRINDA mark for
2 “soft drinks and syrups and concentrates for the preparation of such soft
3 drinks,” which has become incontestable in accordance with 15 U.S.C. § §
4 1065 and 1115(b).
5

6
7 7. Defendants' sale of the Mexican product in the United States
8 without PepsiCo's consent constitutes:
9

10 (a) trademark infringement in violation of section 32 of the
11 Lanham Act, 15 U.S.C. § 1114;
12

13 (b) unfair competition in violation of Section 43(a) of the
14 Lanham Act, 15 U.S.C. 1125(a);
15

16 (c) unfair competition and unfair or deceptive trade practices
17 in violation of the Washington Consumer Protection Act, RCW
18 19.86.020;
19

20 (d) unfair competition in violation of Washington common
21 law; and
22

23 (e) dilution in violation of the Washington Consumer
24 Protection Act, RCW 19.77.160.
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1 8. James M. Danielson shall be an agent of Defendants authorized
2 to receive any subpoena to obtain deposition or trial testimony regarding
3 Defendants' knowledge of the importation into, and sale and distribution in
4 the United States of the Mexican product by third parties. Defendants shall
5 immediately inform PepsiCo, care of Jonathan S. Jennings, 311 S. Wacker
6 Drive, Suite 5000, Chicago, Illinois 60606, if this address for service changes
7 and of any new address for such service.
8
9

10 9. Defendants, their officers, agents, servants, employees,
11 successors and assigns, and all others in active concert or participation with
12 them, are permanently enjoined and restrained from the importation into, and
13 the dealing, marketing, sale or distribution in the United States of soft drinks
14 manufactured or bottled in Mexico, or any other foreign country, bearing any
15 of PepsiCo's PEPSI marks.
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19 10. This Court shall retain jurisdiction over this action for purposes
20 of construing and ensuring compliance with this Final Judgment.
21

22 11. Each party shall bear its own costs.
23

24 SO ORDERED AND ADJUDGED: *The Clerk shall close this file. JWP*

25 Dated this *29th* day of *July*, 2005.

26 
27 United States District Judge

1 CONSENTED AND AGREED TO:

2 T-SALES WHOLESALE MEXICAN
3 FOODS, INC.

4 By: [Signature]

5 Name: DAVID R. DAHL

6 Title: PRESIDENT

7 Date: 7-21-05

8
9
10 DAVID R. DAHL

11 By: [Signature]

12 Date: 7-21-05

13 Defendants

14
15 James M. Danielson
16 JEFFERS, DANIELSON
17 SONN & AYLWARD P.S.
18 2600 Chester Kimm Road
19 P.O. Box 1688 (98807)
20 Wenatchee, Washington 98801
21 Telephone: (509) 662-3685
22 Facsimile: (509) 662-2452

23 By: [Signature]
24 James M. Danielson

25 Dated: 7/20/05

26 Attorney for Defendants

On Behalf of PEPSICO, INC.:

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